

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

JAN 20 1999

IN THE MATTER OF:

DOCKET NUMBER: 97-01000

COUNSEL: NONE

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

He be retired by reason of physical disability, with a disability rating of 30%.

APPLICANT CONTENDS THAT:

Several medical conditions were not included in the Medical Evaluation Board (MEB) summary.

The applicant states that the MEB and the Informal Physical Evaluation Board (IPEB), used only the MEB summary to review the physical disabilities and establish the initial 20% disability rating. The Air Force ultimately rated him with a 20% lumbar spine disability because of the injuries he sustained in a vehicle accident; however, his knees were also injured in the accident and he has now been diagnosed with Chondromalacia Patella which was not evaluated. In addition, his neck disability was not rated, and back disability was rated inconsistent with the medical documents. Documentation shows that he has Chondromalacia Patella in both knees, and that the knee problem was documented in his medical records before he separated from active duty.

In support of the appeal, applicant submits a copy of his medical records.

Applicant's complete submission is attached at Exhibit A.

STATEMENT OF FACTS:

Applicant enlisted in the Regular Air Force on 2 May 1985, in the grade of airman first class.

In the spring of 1986, the applicant was involved in a motor vehicle accident in which he sustained multiple injuries including impending perforation of the small bowel, serosal tear

to the left colon and terminal ileum and a fracture dislocation of the lumbar spine with a flexion distraction type of injury at the L3 level and disruption of the interspinous ligament complex between L2 and L3.

Due to low back pain and right sided buttock and hip pains the applicant was presented to a Medical Evaluation Board (MEB) on 8 September 1995. The MEB referred his case to an IPEB.

On 5 October 1995, the IPEB determined that, based on the diagnosis of mechanical low back pain status post 1986 open reduction and internal fixation for a fracture dislocation of lumbar spine associated with post traumatic arthrosis and flat back deformity with loss of lumbar lordosis, the applicant should be discharged with severance pay with a 20% disability rating.

The applicant disagreed with the IPEB findings and on 20 November 1995, his case was presented to the Formal PEB (FPEB). The FPEB concurred with the IPEB findings and recommendations. The FPEB recommended he be discharged with severance pay with a compensable rating of no more than 20 percent. The applicant disagreed and submitted a written rebuttal for review by the Secretary of the Air Force Personnel Council (SAFPC).

On 6 February 1996, after careful review of the entire case file, including the applicant's rebuttal and additional medical documentation, the SAFPC concurred with the findings of the IPEB and FPEB, and directed the applicant's discharge with severance pay, with a 20% disability rating.

The applicant was honorably discharged on 1 April 1996, under the provisions of AFI 36-3212 (Disability, Severance Pay - 20%). He completed 10 years and 11 months of total active duty.

AIR FORCE EVALUATION:

The Chief, Medical Consultant, BCMR, reviewed this application and states that there is no evidence to support a higher rating at the time of retirement. The applicant's case was properly evaluated, appropriately rated and received full consideration under the provisions of AFI 36-3212.

The Medical Consultant notes that once an individual has been declared unfit, the Service Secretaries are required by law to rate the condition based upon the degree of disability at the time of permanent disposition and not on future events. No change in disability ratings can occur after permanent disposition, even though the condition may become better or worse. However, Title 38, USC authorizes the VA to increase or decrease compensation ratings based upon the individual's condition at the time of future evaluations. Records received to date do not show that applicant has sought disability through the

DVA, whose records show no evaluation having been done up to 3 May 1996. Assuming the applicant has since sought such evaluation, the amount of disability compensation he receives will depend on their findings at the time, and may well include conditions that are service-connected but which were not unfitting for his military service. The action and disposition in this case are proper and reflect compliance with Air Force directives which implement the law. Therefore, based on the evidence provided, the Medical Consultant recommends denial of the applicant's request.

A complete copy of the evaluation is attached at Exhibit C.

The Chief, Physical Disability Division, AFPC/DPPD, reviewed this application and states that they concur with the Medical Consultant's advisory opinion. The record clearly shows that while the applicant may have been treated for various medical conditions besides his back pain while on active duty, none were serious enough to render him unfit for further military service under the provisions of disability law and policy. The fact that a person may have a medical condition does not mean that the condition is unfitting for continued military service. To be unfitting, the condition must be such that it alone precludes the member from fulfilling the purpose for which he is employed. If the board renders a finding of unfit, the law provides appropriate compensation due to the premature termination of their career. Furthermore, it must be noted that USAF disability boards must rate disabilities based upon the member's condition at the time of evaluation; in essence a snapshot of their condition at that time. Under Title 38, the Department of Veterans Affairs may rate any service-connected condition based upon future employability or reevaluate based on changes in the severity of a condition. This often results in different ratings by the two agencies. This, in itself, is not sufficient to warrant a change in the rating assessed under Title 10, USC. All pertinent medical evidence establishes that the applicant was properly found unfit for military duty and awarded an appropriate rating for his disability at the time of his separation. The applicant has not submitted any material or documentation to show that he improperly rated or otherwise improperly processed at the time of his discharge. Therefore, they recommend denial of applicant's request.

A complete copy of their evaluation is attached at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant reviewed the Air Force evaluations and states that he sent copies of his medical records with requests for another opinion and interpretation of his condition to the Chief Orthopedic Surgeon and his care provider at the time, and also the spine specialist. Neither physician responded. Finally, he

sent a similar request to the associate physician for his original spine surgery in 1986. The physician responded by stating that he was only the assistant on his surgery in 1985, and he (the applicant) should contact the primary surgeon for his questions.

The applicant states that he did find a copy of a 4T profile, dated 11 July 1986, written by the Chief Orthopedic Surgeon. According to the PEB Liaison officer (PEBLO) at Hill AFB, the Air Force made a mistake because a 4T profile requires a person to have a medical board at that time, but that never took place until 1995. He states the Air Force made another mistake by writing all 1's for his physical profile on 15 December 1992. The 1's represent no physical restrictions, thus qualifying him for a remote one-year tour to Korea in 1993 and exasperating his physical condition. A statement from an orthopedic surgeon at the Ogden clinic in Ogden, UT, indicates that there is a misinterpretation of the reports regarding both the myelogram and post-myelogram CT scan. Additionally, the surgeon, upon examination, determined a need for permanent disabled "license plates on 23 January 1996. The surgeon indicated that the applicant had permanent conditions and was severely limited in his ability to walk due to an arthritic, neurological, or orthopedic conditions.

The applicant's complete response, with attachments, is attached at Exhibit F.

ADDITIONAL AIR FORCE EVALUATION:

The Chief, Medical Consultant, BCMR, reviewed this application and states that the additional information provided by the applicant does not materially add to the decisions previously reached. A claim that a 4T profile should have led to an MEB in 1986 is incorrect, as that profile was given shortly after his back surgery and valid for 6 months. Only when a 4T becomes permanent or exceeds 12 months in duration does it necessitate a Medical board action. As to the additional days lost from work presented as evidence of ongoing significant medical problems, none of these duty excuses address the reason for their issuance except one which mentions recovery time from a spinal tap. They ranged from 1 to 3 days at a time, the 4 of them totaling 7 days between 12 September and 15 November 1995 and really don't indicate a significant health problem interfering with performance of duties. The issuance of an all 1 profile in December 1992 prior to his assignment overseas does fly in the face of a permanent 3 (for spine and lower extremities) issued in August 1987, but a 3 indicates a condition that does not require frequent medical attention and also indicates a condition that would not interfere with performance of most of an individual's normal duties. His assignment to Korea was appropriate even with a 3 profile, one that had been issued some 5 years before the

assignment came up and which, incidentally, had shown him worldwide qualified. His physical examination performed in connection with this assignment showed no defects that would have precluded that tour. The applicant contacted three physicians in hopes of garnering support for his appeal, none of whom responded to his letters. He furnishes a copy of an opinion rendered by a physician in 1995, information that had been considered in the previous decision processes and which, therefore, is not new and material to this review. Nothing provided by the applicant in his rebuttal statement adds significant or material evidence that would justify a change in previous recommendations. Therefore, the Medical Consultant is of the opinion that no change in the records is warranted and the appeal should be denied.

A complete copy of the Air Force evaluation is attached at Exhibit G.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant reviewed the Air Force evaluation and states that the Hill AFB Physical Evaluation Board Liaison Officer (PEBLO) told him the Air Force erred by not giving him a medical board in 1986. The BCMR Medical Consultant did not remark on the Disabled Person and Physician Disability Certification. In regard to the "1" and "3" referenced on his profile, it seems that he misunderstood what those numbers represented. He is still very confused about the medical board process. The physical exams office at Hill AFB performed a records review in lieu of a physical profile update because his profile stated "permanent". He was told by the command section of his unit that permanent profiles are no longer valid, and was directed to orthopedics for an update. The physical exams office, after the records review, said he never had a medical board and was required to have one. The BCMR Medical Consultant gives the impression that a medical board was not required. If a medical board was not required and he was worldwide qualified without a significant health problem, why did he have a medical board and why is he not still in the Air Force? He asks, does the BCMR medical consultant feel that reinstatement is a possibility? Could the Air Force work around his physical limitations and use him as a resource to finish his Air Force career? His intent was to perform any duty the Air Force gave him to the best of his ability. He wanted to earn a career retirement after 20 years of honorable service, The last thing he wanted was a medical separation.

In further support of the appeal, applicant submits a statement from Orthopaedic Associates, dated 2 April 1998, indicating that there is an exam dated 15 November 1995 which is a Myelogram/CT Scan of the Lumbar Spine which shows some degenerative disc disease post traumatic change, and degenerative arthritic changes to produce modest compromise of the L2-3 level particularly

centrally and right forward, which creates some mild narrowing at that level.

Applicant's complete responses, with attachments, are attached at Exhibits I and J.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was timely filed.
3. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. After thoroughly reviewing the evidence of record and noting the applicant's contentions, we are not persuaded that he should have received a disability rating higher than 20% at the time of his discharge. Although the applicant may have received treatment for various medical conditions other than his back pain while on active duty, none were serious enough at the time of his separation to render him unfit for further military service. Therefore, we agree with the comments of the Chief, Medical Consultant, BCMR and adopt his rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. We also agree with the Chief, Medical Consultant, BCMR that the proper course of action for the applicant is to seek a disability rating from the DVA. In the absence of evidence the applicant should have been rated higher than 20%, we find no compelling basis to recommend granting the relief sought in this application.
4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issue(s) involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of probable material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered this application in Executive Session on 1 October 1998, under the provisions of AFI 36-2603:

Mr. Thomas S. Markiewicz, Panel Chair

~~Mr. Robert W. Zook, Member~~
~~Mr. Edward H. Parker, Member~~

Mr. Phillip E. Horton, Examiner (without vote)

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 14 Mar 97, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, BCMR Medical Consultant, dated 22 Jul 97.
- Exhibit D. Letter, AFPC/DPPD, dated 24 Sep 97.
- Exhibit E. Letter, AFBCMR, dated 13 Oct 97.
- Exhibit F. Letter, Applicant, dated 23 Nov 97.
- Exhibit G. Letter, BCMR Medical Consultant, dated 21 Jan 98.
- Exhibit H. Letter, AFBCMR, dated 8 Feb 98.
- Exhibit I. Letter, Applicant, dated 13 Feb 98.
- Exhibit J. Letter, Applicant, dated 24 Feb 98.
- Exhibit K. Letter, Applicant, dated 1 Apr 98, w/atrch.


 THOMAS S. MARKIEWICZ
 Panel Chair